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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,515	11/05/2003	Kevin D.J. Bowden	13789-38US PJF/rl	5948
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OGILVY RENAULT LLP 1981 MCGILL COLLEGE AVENUE SUITE 1600 MONTREAL, QC H3A2Y3 CANADA			EXAMINER LOPEZ, AMADEUS SEBASTIAN	
			ART UNIT 3771	PAPER NUMBER
DATE MAILED: 12/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/700,515	Applicant(s) BOWDEN ET AL.	
	Examiner Amadeus S. Lopez	Art Unit 3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11/05/2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 5 recites the limitation "the BSI alarm circuit" and "the MDP alarm circuit" in lines 1 and 2 of the claim. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 6, 7, 9, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bliss et al (6289890).

As to claim 1, Bliss et al discloses an automatic ventilator for cardio-pulmonary resuscitation (CPR) comprising: an automatic ventilating circuit (Fig. 1) adapted for delivering two cycles of positive pressure breathable gas flow ventilation to a patient's airway; and a CPR timing circuit (Col. 3, lines 45-48) adapted to emit timed signals over a CPR period, after said two cycles, to guide an operator to time chest compressions applied to a patient. It has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Therefore it is concluded that the device of Bliss et al is fully capable of performing the functions that the device of the instant application is adapted to perform based upon the controller system (20) being capable of delivering two cycles of breathable gas flow to a patient and sending timing signals to the speaker 26 which the user hears and uses to synchronize the delivery of chest compressions (Col. 3; lines 30-48).

As to claims 6 and 7, Bliss et al disclose an automatic ventilator with all the limitations of the claim with the exception of wherein said cycles of positive pressure breathable gas flow have an inspiration time of about 2 seconds and an expiration time of about 4 seconds. After reviewing the specification, the examiner has concluded that the applicant does not establish any criticality for claiming an inspiration time of about 2 seconds or an expiration time of 4 seconds. It would have been an obvious matter of design choice to one of ordinary skill to expect a different inspiration and expiration

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time range for the different types of possible users of the device. For example, a healthy young individual would require a different inspiration and expiration time than an elderly individual who is suffering from disease such as Chronic Heart Failure or emphysema, or a young infant. Therefore it would have been an obvious matter of design choice to have the inspiration and expiration times vary for different users because each individual would require different times of inspiration and expiration that would vary from the claimed 2 and 4 seconds for inspiration and expiration, respectively. Further it is concluded that the device of Bliss et al is fully capable of performing the functions that the device of the instant application is adapted to perform based upon the controller system (20) being capable of being configured to vary the inspiration and expiration times to 2 and 4 seconds respectively.

As to claims 9 and 10, Bliss et al disclose an automatic ventilator with all the limitations of the claim with the exception of wherein the CPR period has a time of about 9 seconds and wherein fifteen signals are emitted during the CPR period. The American Heart Association sets guidelines on the parameters and the proper guidelines for proper cardiopulmonary resuscitation (Col. 3, lines 36-42). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the CPR time period and the number of signals emitted by an automatic ventilator during the CPR period correspond to the proper number of chest compressions and time period as suggested by the guidelines set by the American Heart Association, which would include the claimed 9 seconds for the CPR period and fifteen signals

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during the period if these are within the recommended parameters for proper cardiopulmonary resuscitation.

Claims 2-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bliss et al (6289890) in view of Bowden et al (6374827).

As to claims 2 and 3, Bliss et al disclose an automatic ventilator with all the limitations of the claim with the exception of the ventilator comprising: a breathing system integrity alarm circuit including a BSI alarm signal emitted when the gas pressure in the airway during inspiration is below a predetermined minimum pressure or above a predetermined maximum delivery pressure. Bliss et al disclose in Col. 3, lines 19-23 that the apparatus has a spontaneous mode during which a patient breathes naturally. "If this volume is below a predetermined minimum level, the apparatus increases the pressure it delivers during inhalation to assist the victim's inspiratory effort." Bowden et al disclose an automatic ventilator comprising: a breathing system integrity alarm circuit (Col. 8, lines 8-36) including a BSI alarm signal emitted when the gas pressure in the airway during inspiration is below a predetermined minimum pressure (Col. 8, lines 12-15). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ventilator apparatus of Bliss et al to include an alarm system as taught by Bowden et al because it would allow a physician or other medical professional to be aware of the ventilation conditions of the apparatus so that proper protocol may be carried out to make sure that the gas delivery is returned to normal parameters when it is either below or above a predetermined delivery pressure to be delivered to a patient.

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As to claims 4, Bliss et al discloses an automatic ventilator wherein the CPR timing circuit emits timed signals including at least one of: a verbal signal; an audible signal; and a visual signal (Col. 3, lines 45-48; Bliss et al disclose an audible signal that is emitted for a user to hear and use for synchronization with the delivery of chest compressions).

As to claim 5, Bliss et al disclose an automatic ventilator with all the limitations of the claim with the exception of wherein at least one of the BSI alarm circuit and the MDP alarm circuit include an alarm selected from the group consisting of: an audible alarm; and a visual alarm. Bowden et al discloses an automatic ventilator wherein at least the BSI alarm circuit includes an alarm consisting of an audible alarm (Col. 8, lines 8-36; alarm 58 is disclosed to be a reed alarm which is an audible alarm). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ventilator of Bliss et al. to include a BSI audible alarm as taught by Bowden et al because it would allow a physician or other medical professional to be aware of the ventilation conditions of the apparatus so that proper protocol may be carried out to make sure that the gas delivery is returned to normal parameters when it is either below a predetermined delivery pressure to be delivered to a patient.

Claims 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bliss et al (6289890) in view of Lurie et al (6155257).

As to claim 8, Bliss et al disclose an automatic ventilator with all the limitations of the claim with the exception of wherein the cycles deliver a tidal volume of about 0.5L per cycle. Lurie et al disclose a ventilator apparatus wherein the proper tidal volume is

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determined and delivered to a patient by a pressure sensing mechanism (Col. 7, lines 35-50). Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the ventilator of Bliss et al to include a means to deliver .5L per cycle or any other tidal volume that would be effective in use of resuscitating a patient because different users would require different tidal volumes and it would be beneficial for the ventilator to be capable of delivering air with variable tidal volumes. Further, it is concluded that the device of Bliss et al is fully capable of performing the functions that the device of the instant application is adapted to perform based upon the controller system (20) being capable of being configured to deliver varying rates of and pressure of air.

Conclusion


The prior art made of record and not relied upon is considered pertinent to the applicant's disclosure. US 6511412, US 2004/0230140, US 4297999, US 5327887, US 4196725, US 4397306, US 6234985, and US 5398676. The range of art is disclosed to be cardiopulmonary resuscitation devices with at least ventilating means.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amadeus S. Lopez whose telephone number is (571) 272-7937. The examiner can normally be reached on Mon-Fri 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Amadeus S Lopez
Examiner
Art Unit 3771
December 2, 2006


TEENA MITCHELL
PRIMARY EXAMINER

ASL